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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD

Report on the human rights situation in the Republic of Equatorial Guinea submitted by the Special Representative of the Commission, Mr. Gustavo Gallón, pursuant to Commission resolution 2000/19

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Executive Summary

In its resolution 2000/19, the Commission on Human Rights decided to renew the mandate of the Special Representative for Equatorial Guinea, Mr. Gustavo Gallón (Colombia), and entrust him with a dual task, to monitor the human rights situation in the country and to monitor any technical assistance which might be provided. Equatorial Guinea has been monitored by the Commission since 1979.

The Government of Equatorial Guinea did not give the Special Representative leave to visit the country in accordance with his mandate during the year 2000, following the adoption, without a vote and with the Government's consent, of Commission resolution 2000/19. The Special Representative received no reply to several requests he sent to the Government for information concerning the human rights situation in the country. In order to clarify and update the information for his report, in November 2000 the Special Representative visited Spain (where approximately 10 per cent of the citizens of Equatorial Guinea live) and met with individuals and organizations having ties to the country, including victims of human rights violations.

The human rights situation in the country did not improve during 2000. The Special Representative's conclusions in his previous report to the Commission remain applicable in their entirety. There continues to be no sustained rule of law in Equatorial Guinea; rather, power is concentrated in the hands of the executive, which leads to continued arbitrary detention and torture designed to prevent actual or suspected coup d'état attempts, or in any case to prevent political parties or ethnic groups opposing the governing group from gaining power. In lieu of an independent judiciary working to impede or redress such practices, the military and the governing party exercise various de facto and de jure powers to control the population, 65 per cent of which lacks the means of satisfying its basic needs. There is no regular publication of laws in an official gazette nor daily newspaper through which freedom of opinion may be exercised, and human rights organizations are not authorized to function. There are no trade unions, with the exception of a farmers' association that appears to have been established in 2000. Women and children are the most seriously affected by discrimination in the country, especially (but not only) with regard to education and health.

The situation could be improved with a modicum of political will and with appropriate distribution of the increasing economic resources which Equatorial Guinea has been receiving since 1995 from its extensive oil well operations. To this end, the support of the international community, and the Commission in particular, are of vital importance, to ensure the success of the efforts made over the past 21 years, during which the situation has been monitored, technical support provided and basic recommendations formulated, most of which have yet to be given effect. Also of vital importance is cooperation from the multinational corporations which are drawing enormous wealth from the territory.

Among several events which occurred in Equatorial Guinea during 2000, one case eloquently sums up the situation described above. A Spanish citizen of Equatorial Guinean origin, who travelled to the country in the middle of the year to visit his family, was held in incommunicado detention for 60 days in the country's main prison, where he was subjected to torture, and where he witnessed similar treatment meted out to five other prisoners who are still

in detention. The individual concerned, Mr. Augusto-Mba Sa Oyana, was arrested by the authorities, without a judicial warrant, on 17 June 2000. He was taken from the plane during a stopover at the airport in the capital, and incarcerated in Black Beach prison, situated within the presidential compound, where he was tortured in an attempt to make him admit participation in an alleged insurrection plan. For more than 10 days the authorities concealed his whereabouts, even to the diplomatic representatives of Spain, which constitutes an act of enforced disappearance. He was stripped of his belongings, totalling 20 million CFA francs (approximately US$ 28,700), were taken from him by a senior official of the State Security Service, who demanded the money supposedly to hire a special plane that would take him back to Spain, a trip which never took place. Mr. Sa Oyana managed to escape prison on 18 August 2000, through a hole in the ceiling of his cell, and reach the diplomatic mission of Spain, where he eventually obtained assistance in leaving the country. His prison companions, Equatorial Guinea nationals, would have gained little by escaping, as they would simply have been rearrested, not being entitled to diplomatic assistance to travel abroad. Four of them are activists in the Fuerza Demócrata Republicana (FDR) party and were arrested just before the municipal elections held in May 2000. The fifth prisoner being held incommunicado (the circumstances under which Mr. Sa Oyana met him while in prison) is a person convicted of homicide. According to that prisoner, in late 1999 the Government attempted to hire him to assassinate another individual, a person who was Minister of Foreign Affairs until a few years ago, who succeeded in fleeing the country while the price to be paid for the murder contract was being negotiated. No judicial authority intervened at any time during Mr. Sa Oyana's imprisonment to guarantee his rights to freedom, integrity of the person, food (he received no food from the prison authorities during this period), health (sanitary conditions in the prison were appalling) or defence (he was never brought before a judge), among others. Mr. Sa Oyana has no reason to believe that, were he to lodge a complaint with the courts of Equatorial Guinea for the violations suffered, the necessary resources and independence would exist to produce a fair judicial decision against his captors and torturers, or against the State, requiring it to provide compensation for the rights violated.

Situations similar to that suffered by Mr. Sa Oyana and by the five other persons who were and are still being held in Black Beach prison have been described repeatedly in previous reports submitted to the Commission by this Special Representative and by his distinguished predecessors over the past 21 years. There is no doubt that the situation is serious, persistent and systematic, in the face of which the Commission cannot fail to act.

The conclusions and recommendations concerning technical assistance to Equatorial Guinea put forward by the Special Representative in the report he submitted in 2000 also remain applicable. Technical assistance to Equatorial Guinea may be useful for supporting the country as it moves towards democracy and respect for human rights, provided that it is preceded by the adoption of a specific programme. The first step in such a programme would be the implementation of the recommendations which do not require technical assistance, and which have been formulated time and again over the past 21 years. The decisions required are simple ones, such as the effective prohibition of arbitrary detentions, the elimination of permits to leave the country and the ratification of international treaties such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Convention on the Elimination of All Forms of Racial Discrimination. Once these and other similar recommendations have been implemented, the Government might agree with the international

community on a timetable and a description of the cooperation activities it needs to give effect, through technical assistance, to the remaining recommendations, relating in particular to the independence of the judiciary, the codification of laws and political pluralism. The respective agreement or agreements should be based on the recommendations and decisions repeatedly adopted by the Commission, and should be implemented, with respect for the autonomy of each cooperating agency, under the supervision of the Commission, through its Special Representative and through the Office of the United Nations High Commissioner for Human Rights.

In 2000 technical assistance agreements between the Government of Equatorial Guinea and the European Commission, the United Nations Development Programme (UNDP) and the Government of Spain were concluded or were in their initial stages; all have been designed to focus in some way on the recommendations adopted by the Commission in resolution 2000/19. In order for this approach to be as timely, complete and effective as possible, it would be desirable that, prior to the implementation of the agreements, the fulfilment by the Government of Equatorial Guinea of the recommendations which do not require technical assistance should be verified.

Consequently, it is recommended that the Commission should renew the mandate of the Special Representative to monitor the situation of human rights in Equatorial Guinea and to monitor any technical assistance provided. The Commission should take additional precautionary measures to ensure that the authorities of Equatorial Guinea cooperate with the mandate of the Special Representative and fulfil the recommendations formulated by the Commission over the past two decades, to enable the country to overcome its serious human rights crisis.

Introduction

1. Equatorial Guinea has been under scrutiny and monitoring by the Commission on Human Rights for longer than any other country. After beginning in 1976 the confidential investigation provided for in Economic and Social Council resolution 1503 (XLVIII), the Commission decided in 1979 to consider the case of Equatorial Guinea in public meetings as a situation of serious, persistent and systematic violations of human rights, and has maintained that decision to date. To that end, it appointed Mr. Fernando Volio Jiménez (Costa Rica) Independent Expert and renewed his mandate each year through 1992. In his last report, submitted to the Commission in 1993, Mr. Volio expressed concern at the basic lack of change in the human rights situation in the country. In 1993 a new Special Rapporteur was appointed, Mr. Alejandro Artucio Rodríguez (Uruguay), whose mandate was renewed each year for six years. In his last report, submitted to the Commission in 1999, Mr. Artucio recommended that the Commission should not relax its monitoring of the situation, given the fragility of the population's legal protection against practices that violate human rights, such as torture, arbitrary detention and limitations on the parties' political action. In resolution 1999/19, the Commission endorsed that recommendation and decided to continue to keep the situation under review through a special representative entrusted with the task of monitoring the human rights situation, and, in addition, of formulating recommendations on the implementation of technical assistance to Equatorial Guinea. Mr. Gustavo Gallón Giraldo (Colombia) was appointed as the new Special Representative in August 1999.

2. The Special Representative submitted his first report to the fifty-sixth session of the Commission (E/CN.4/2000/40), after visiting Equatorial Guinea in November 1999. In it he stated that the situation in Equatorial Guinea was one of systematic violation of human rights together with impunity, which had been continuing for over three decades and even dated back to the colonial era, before the country obtained independence from Spain in 1968, when its first president, Fernando Macías, was elected. President Macías' regime promptly became a dictatorship and he was overthrown in 1979 by his nephew, then a lieutenant-colonel and Minister of Defence and now President, Teodoro Obiang Nguema. The Special Representative noted that, although some institutional changes have been introduced since then (such as the existence of political parties other than the governing party, since 1992, and the establishment of a Constitutional Court), power is concentrated in the hands of the executive, which controls even the most minor Government posts and many in the private sector. Thus the possibility of a State under the rule of law is neutralized by what is actually a single-party regime functioning with the support of a military whose powers are no different from those of the police and which even exercises jurisdiction over civilians.

3. The Special Representative warned that such circumstances were unconducive to overcoming extreme poverty (which affects 65 per cent of the population) despite extensive oil well operations in the country since 1995. If such resources are marshalled within a context of respect for human rights, the minimum levels of education and health which are lacking today, and which particularly affect children, could rapidly be reached. Otherwise, the Special Representative is of the view that the unequal enjoyment of recently-acquired wealth will continue to aggravate such phenomena as child prostitution and, consequently, the already serious discrimination against women in Equatorial Guinea society.

4. The Special Representative's comments after his first visit to the country were essentially the same as those which had been stated before the Commission over the previous 20 years by the former Special Rapporteurs and the Independent Expert appointed by the Commission every year without interruption since 1979. Consequently, the recommendations of the Special Representative in the report which he submitted in 2000 were also substantially the same. However, the Special Representative also recommended that those recommendations should be arranged within a specific programme that would distinguish between those recommendations which did not require technical assistance for their implementation and those which did, so that the former might be put into practice by the Government rapidly, while the latter might be implemented as part of specific cooperation programmes coordinated under Commission supervision. The Special Representative has accordingly fulfilled the mandate entrusted to him in Commission resolution 1999/19, under which, in addition to monitoring the human rights situation in the country, he should submit to the Commission a report that would include recommendations on the implementation of technical assistance programmes to Equatorial Guinea.

5. In its resolution 2000/19, the Commission welcomed the Special Representative's recommendations and renewed, strengthened and expanded his mandate, reiterating its request that he monitor the situation of human rights in Equatorial Guinea and report to it at its fifty-seventh session (para. 11), and also requesting him "to verify, on behalf of the Commission, that the technical assistance provided to Equatorial Guinea supports its national plan of action on human rights, based on the recommendations made since 1979 and reiterated in his report" (para. 12).

6. In order to prepare his second report to the Commission, the Special Representative made three written requests to the Government of Equatorial Guinea for leave to visit the country in 2000, but received no reply from the authorities to his letters. The first of the letters was sent on 15 May 2000 to the Minister for Foreign Affairs and the Minister of Justice and Worship, proposing a visit to the country from 11 to 25 June 2000. Having received no reply, he sent a second letter on 7 June 2000 reiterating his request and proposing the period from 6 to 20 August 2000 for the visit. Having received no reply to the second letter, the Special Representative sent a third communication to the Government on 3 July 2000, reiterating his proposal for a visit from 6 to 20 August 2000 and respectfully requesting the Government to reply to his application for leave to visit, so that he might make arrangements for the activities required for the fulfilment of his mandate. The Special Representative received no reply from the Government to his third request.

7. The Special Representative learned unofficially that the Minister of Justice and Worship (who is responsible for human rights issues in Equatorial Guinea) had sent the Minister for Foreign Affairs an internal "information note" on 9 June 2000 stating that he found it "inappropriate that a visit [by the Special Representative of the Commission on Human Rights] should take place before the Government of Equatorial Guinea and the Office of the United Nations High Commissioner for Human Rights [had] drawn up the new programme of cooperation and technical assistance (...)". A copy of this internal communication was sent to the UNDP office in Malabo, which was how the Special Representative learned of it. Although the above-mentioned "information note" was not an official reply to his letters, the Special Representative deemed it appropriate to become acquainted with the note and to invite the

Minister for Foreign Affairs and the Minister of Justice and Worship to reconsider the position expressed in it. To that end he informed them, with due respect, that the two aspects of the mandate entrusted to him by the Commission are complementary, that their fulfilment is in no way contingent on the existence of a technical assistance agreement between the Government of Equatorial Guinea and United Nations bodies, and that his visit to the country is not viewed as a prerequisite for a technical assistance agreement. He stated as much in his letter of 3 July 2000 (annex), in which he respectfully requested the Government of Equatorial Guinea for leave to visit the country in pursuance of the commitments made by the Government when Commission resolution 2000/19 was adopted, with the consent of the Government of Equatorial Guinea and without a vote.

8. In a fax sent to the Minister of Justice and Worship on 18 July 2000, the Office of the High Commissioner, which was also unofficially informed of the above-mentioned "information note", reminded the Government of Equatorial Guinea that any technical assistance activities were subject to the principles of transparency and complementarity as established by the 1993 Vienna World Conference on Human Rights and reiterated in the seventh preambular paragraph of Commission resolution 2000/19. The Government was also informed, in the 18 July fax, that the Office of the High Commissioner was fully prepared to provide technical assistance to Equatorial Guinea, and that its collaboration with Commission mechanisms was required in order that concrete cooperation initiatives might be developed.

9. Given the Government's failure to reply to his repeated applications for leave to visit the country, the Special Representative sent the Chairman of the Commission a letter dated 16 August (on the occasion of an unofficial meeting of the Commission on Human Rights on 15 September 2000), informing him, and asking him to inform the members of the Commission, of the obstacles which he was encountering in discharging his mandate.

10. With a view to collecting the information which the Government considers relevant for use in the preparation of his report through means other than the banned visit to the country, the Special Representative sent a letter dated 10 October 2000 to the Minister for Foreign Affairs and the Minister of Justice and Worship, asking them to inform him of any administrative, legislative or judicial measures taken or proposed by the Government of Equatorial Guinea in connection with the recommendations contained in resolution 2000/19. At the time this report was drafted, in December 2000, the Government had not replied to his request.

11. At various times during 2000, the Special Representative wrote to the authorities of Equatorial Guinea to request information about different cases, and received no replies from the Government. On 14 March he sent the Minister of Justice a letter requesting information on the reasons for the transfer of 41 detainees belonging to the Bubi ethnic group from their prison on the island of Bioko to a prison on the continent, far from their families. On 14 June he sent another letter asking to know the official results of the municipal elections held on 28 May 2000, the situation of four militants from the Fuerza Demócrata Republicana (FDR) party who had been detained since May 2000 and the situation of the above-mentioned detainees of the Bubi ethnic group. On 4 August he sent another letter to ascertain the whereabouts and conditions of detention of Mr. Augusto-Mba Sa Oyana, who had been abducted by government authorities in the Malabo airport on 17 June 2000.

12. Not having received leave to visit the country, the Special Representative decided to carry out a mission to Spain (where approximately 10 per cent of Equatorial Guinean citizens live) in order to collect information, through interviews of or testimony received from persons having ties to Equatorial Guinea, including victims or witnesses of human rights violations, representatives of Equatorial Guinean political parties and representatives of NGOs and community associations. The visit took place from 20 to 25 November 2000, in Madrid. The Special Representative also met with representatives of the Ministry of Foreign Affairs and the Spanish Agency for International Cooperation.

13. After returning from his mission to Spain, the Special Representative again wrote to the Minister for Foreign Affairs and Minister of Justice and Worship, on 4 December 2000, requesting information on some situations which had come to his attention, in order to obtain the point of view of the Equatorial Guinea authorities and include it in his report. At the time this report was drafted, the Government had not replied to his request.

I. SITUATION OF CIVIL AND POLITICAL RIGHTS

A. Right to vote and to be elected

14. Municipal elections were held on 28 May 2000. By law they should have taken place towards the end of 1999, but in October 1999 the Government signed an agreement with the political parties to hold them in the first quarter of 2000. They were eventually held in the second quarter of that year.

15. In the previous municipal elections held in 1995 opposition parties banded together to form the so-called Joint Opposition Platform (POC) which for the first time managed to win 9 mayorships out of a total of 27. Since then, the opposition parties have been complaining about attempts by the governing party to recover the nine mayorships by devious means; it is said that six of the nine mayors were bribed or pressured to join the ranks of the government party, the Democratic Party of Equatorial Guinea (PDGE). During his visit to the country in 1999, the Special Representative was informed that only the mayors of Malabo, Rebola and Mbini were still holding on to their posts as representatives of the opposition and were experiencing persistent harassment both in their work and in their private lives.

16. In view of what had happened, representatives of the opposition parties predicted that the Government would do everything possible to ensure that, in contrast to its performance in the 1995 elections, the opposition would not win any mayorships in the 2000 elections. Having assessed the situation, the three recognized opposition parties, Convergencia para la Democracia Social (CPDS), Unión Popular (UP) and Alianza Democrática y Progresista (ADP), decided that they would not participate in the elections.

17. The Government failed to transmit to the Special Representative official information concerning the election results despite the formal request he made in his letter of 14 June 2000. Nor does the Special Representative have any knowledge of the official results of the elections being announced in any publication.

18. According to the newspapers, the elections were characterized by a high abstention rate. Of the 244 town councillor posts vacant, only 14 were assigned to the opposition parties that participated in the elections and none of these 14 went to an opposition candidate standing for the post of mayor. The electoral campaign was characterized by the omnipresence of the PDGE party, voting in public and the intimidating presence of the armed forces. Only a few representatives of the International Organization of la Francophonie (OIF), the African, Caribbean and Pacific group of States (ACP States) and the United States consulting firm Institute for Democratic Strategies (advisor to the Government) were present as observers.

19. In his previous report (E/CN.4/2000/40, para. 145), the Special Representative had urged the Government to take the necessary steps as soon as possible to have an electoral assistance mission sent to the country by the United Nations or the European Union in order to prove to the international community that it was firmly committed to a genuine multi-party system. This recommendation was endorsed by the Commission which, in its resolution 2000/19, encouraged "the Government of Equatorial Guinea to invite to the country an electoral observer mission of the United Nations, and/or of impartial observers for the [...] municipal elections" (para. 10).

20. On 29 April, the Ministry of Foreign Affairs, in a letter to the United Nations Secretary-General, extended an invitation to an electoral observer mission comprising representatives of the Commission on Human Rights, to be present during the elections. As the UNDP Resident Representative in Malabo had informed the Minister in a letter dated 4 February 2000, technical and financial assistance in connection with the elections was made conditional on a mission to "evaluate the conditions in which the electoral process would take place as well as the existence of prior agreement on United Nations involvement throughout the electoral process and the unrestricted participation of candidates of all political parties". The United Nations Electoral Assistance Division informed the authorities of Equatorial Guinea that the request should be submitted at least three months in advance so that the electoral observer mission could be properly prepared.

21. On 5 May 2000, the Special Representative sent a letter to the Minister of Justice informing him that the Governments of Argentina and Chile had expressed their willingness to send electoral observers. On 15 May 2000, the Minister of Justice informed the Special Representative that the Government of Equatorial Guinea had contacted the Governments of Argentina and Chile. However, for unknown reasons, observers from these countries were not present on election day.

22. According to credible sources, the following irregularities, among others, were noted: the names of persons who were not registered appeared on the electoral rolls; voting was public at a large number of polling stations; many polling stations were supervised by soldiers on duty; several opposition party militants were detained without a warrant; and the allocation of seats was of an arbitrary nature in that certain parties were given seats without having obtained 10 per cent of the vote as required under the electoral law.

23. Several parties complained that the Government not only harassed militants in their political activities and private life but also interfered in the internal organization of parties in order to create discord. For example, the traditional leadership of UP claimed that the Government had financed an illegal convention to bring in new leaders. They also alleged that,

although UP had decided that none of its members would sit in Parliament (in which it received 4 seats out of a total of 80 in the 1999 legislative elections that the party considered to be fraudulent), the Government co-opted four former members of the party to occupy seats in the House of Representatives of the People in a way that made them out to be representatives of the opposition. These complaints should be looked into since they are similar to those made by other political parties such as ADP and the Acción Popular (AP) party, whose independent leaders were allegedly replaced by persons who have joined the government party, PDGE.

24. The Fuerza Demócrata Repúblicana (FDR) party, which has been seeking recognition since 1995, is still awaiting a reply to its application. In his public statements, the President of the Republic is said to have stated that "Legalizing it would be to invite lung cancer". FDR defines itself as a centre-right party comprising persons who belonged to the former regime of President Macías or the present regime of President Obiang, many of whom are related to one or the other but who say that they are in favour of the country's democratization.

25. Other parties also lack the legal authorization they require in order to function. No reply has apparently been received to the application for legalization submitted by the Independent Democratic and Social Party (PIDS), headed by the lawyer José Oló Obono referred to in the Special Representative's previous report. The decision declaring the Progress Party (PP) illegal under a criminal sentence imposed on its leader in 1997 for having attempted to prepare a coup d'état has been upheld, despite the fact that it has been established time and time again that this act was carried out in a personal capacity and not by a party. The Movement for the Self-Determination of the Island of Bioko (MAIB), which claims to represent the interests of the Bubi ethnic group, is still considered illegal and non-existent by the Government on the grounds that electoral legislation bans political parties of an ethnic character.

26. Political persecution in Equatorial Guinea is not limited to the confines of the country. Mr. Aquilino Nguema Ona Nchama, Secretary-General of the Unión para la Democracia y el Desarrollo Social (UDS) party, who had the status of political refugee in Gabon under the auspices of the Office of the United Nations High Commissioner for Refugees (UNHCR) personally informed the Special Representative that he was abducted on 18 May 2000 by three members of the Gabonese security forces. The abduction allegedly took place on the basis of an agreement with the authorities of Equatorial Guinea, who paid 200 million CFA francs (some US$ 287,000) for the operation. According to him, his transfer to Malabo was prevented by the intervention of the Spanish Embassy and Agence France-Presse. He was detained without a warrant for two days in the records office, not allowed to receive any visits, and the Gabonese authorities decided to expel him from the country on suspicion of engaging in subversive activities and for breaches of the peace. Mr. Ona Nchama is a teacher and had founded a college, of which he was Director, in Libreville (capital of Gabon) to provide schooling in Spanish to children from Equatorial Guinea living in Gabon. He had more than 900 pupils. Having sought refuge in Madrid following his expulsion from Gabon, he was obliged to train as an electrician in order to make a living. His family, which is still in Gabon, consists of his wife Adèle Nkene (33 years of age), his children Juliana, Romaricio and Begoña Nguema (15, 13 and 6 years of age respectively) and his younger brother Martín Nnandong Nguema (18 years of age), who are completing the formalities required for entry into Spain.

27. Mr. Ona Nchama was also President of the Collective of Equatoguinean Political Refugees in Gabon. On 18 January 1998 an attempt was made on his life, which he attributes to members of Equatorial Guinea's secret police. As President of the Collective he had reported various assassination or abduction attempts - some of which were successful - made in previous years against Equatorial Guinean dissidents outside the country. During 2000, in addition to his own situation, he also reported an attempt to abduct Mr. Angel Nguema Ndje (former Director-General of the National Security Agency) in Bitam, a town on the frontier between Equatorial Guinea and northern Gabon. The operation was allegedly carried out by a mayoress from Equatorial Guinea.

28. During his stay in Madrid, the Special Representative met with members of several opposition parties, both recognized and not recognized by the Government of Equatorial Guinea. A group of political parties and social organizations comprising the Alianza Nacional para la Restauración Democrática (ANRD), CPDS, FDR, Foro para la Democracia en Guinea Ecuatorial (FODEGE), PP, UP, UDDS, Parido de la Coalición Democrática (PCD), MAIB, Unión de Demócratas Independientes (UDI), Asociación de los Refugiados Guineanos en España (AREGE) and Plataforma para la Paz y los Derechos Humanos en Guinea Ecuatorial (PDHGE), requested the Special Representative, on behalf of the people of the Republic of Equatorial Guinea exiled or resident in Spain, to use his good offices as a mediator between the opposition and the President of Equatorial Guinea in order to promote a democratic process based on respect for the will of the people of Equatorial Guinea. The text of the petition formulated by this group is as follows:

> "CONSIDERING that successive programmes for the establishment of respect for human rights in Equatorial Guinea have resulted in deadlock, as a direct result of the stagnation in the process of transition to a democratic system begun in 1991,
>
> "NOTING the repeated failure of Teodoro Obiang Nguema and his Government to carry out democratization programmes submitted to the international community as well as to implement agreements concluded with the democratic opposition,
>
> BEARING IN MIND the need to change the present regime in the near future in order to initiate a democratic transition process and to establish in Equatorial Guinea a DEMOCRATIC AND SOCIAL STATE SUBJECT TO THE RULE OF LAW, in agreement with all the country's political and ethnic forces and in conformity with their wishes freely expressed in a referendum,
>
> MINDFUL also of the delicate political stage that the country has entered, in the context of which the opposition is prepared, as a credible alternative, to propose a practical formula that would facilitate the implementation of a peaceful and ordered transition process in Equatorial Guinea,
>
> REQUESTS the mediation of the international community (rapporteur) in promoting in the near future

NEGOTIATIONS between Teodoro Obiang Nguema and his Government and the opposition at a conference to be held in a third country, with the appointment of an INTERNATIONAL FOLLOW-UP COMMITTEE in order to achieve agreements on the following:

1. Declaration of a general amnesty, the release of all political prisoners and the return of all exiles.

2. Measures to guarantee the exercise of the right to freedom of expression and movement, political rights and the maintenance of law and order.

3. Recognition of all political parties which, for some reason or another, have not yet been legalized.

4. Formation by consensus of a government of national unity for the transition period lasting up to one year.

5. Establishment of a constituent assembly to draw up a new constitution.

6. Preparation of new electoral rolls.

7. Organization of a referendum on the new constitution and general elections to form the new democratic Government.

8. Transfer of power to the new democratically-elected Government.

All the agreements reached on each and every one of the above points should be supported and monitored by the international community in general and by the Kingdom of Spain in particular".

29. The Special Representative considers that this proposal should be brought to the attention of the Equatorial Guinea authorities and the international community, as represented in the Commission on Human Rights, and respectfully urges them to take into consideration the invitation it contains to participate in a dialogue and the desirability of suitable international follow-up action which would facilitate its implementation and lead to a considerable improvement in the human rights situation in the country.

B. Rights to equality and self-determination (racial discrimination)

30. In his previous report, the Special Representative expressed his concern, as his distinguished predecessors had done, about the discrimination practised by the Fang, who are the majority ethnic group in the country, against the Bubi who are the majority ethnic group on the island of Bioko (where the capital is located), although they are a minority in the rest of the territory. Like previous rapporteurs, he also urged the Government to ratify the International Convention on the Elimination of All Forms of Racial Discrimination and to bear in mind

general recommendation XXI (48), adopted in 1996 by the Committee on the Elimination of Racial Discrimination, so that the Bubi people's right to self-determination could be recognized without thereby renouncing the right to the unity and sovereignty of the State. The Special Representative has received no information from the Government on this subject.

31. On the contrary, he continues to receive information from representatives of the Bubi people about the persistence of various forms of discrimination such as military roadblocks that hamper their movement and prevent access to markets, and the refusal to recognize the existence of MAIB, which is the political voice of the Bubis.

32. The Special Representative also received complaints of Government discrimination against other ethnic groups in Equatorial Guinea such as the Ndowes and Bissios (who live along the coast of Río Muni province), the Bengas (from the islands of Corisco and Elobeyes), the Annoboneses (from the island of Annobón whose isolation is due in part to the fact that this island is 500 kilometres by sea from the capital) and the so-called Criollos or Fernandinos (descendants of immigrants from Benin, Cameroon, Nigeria and Sierra Leone among other neighbouring countries).

33. The generally peaceful nature of the various ethnic groups in Equatorial Guinea explains why the discrimination they experience has not given rise to large-scale violent conflicts. Yet it is not inconceivable that failure to do something about this discrimination might well result in such conflicts at any time. On the other hand, the adoption of measures to turn the country's multi-ethnic composition to advantage, and to accord political treatment more in line with its ethnic diversity on the basis of respect for and protection of human rights, would certainly contribute to the advancement of the country's society. The World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance to be held in 2001 will offer a favourable opportunity to do so.

C. Right of association (and protection of human rights defenders)

34. The Commission, in its resolution 2000/19, decided to urge the Government of Equatorial Guinea to authorize, "without any undue restriction, the public registration and freedom of activity of non-governmental organizations, in the field of human rights and social affairs" (para. 8).

35. The Special Representative has received no information about any positive developments as regards enjoyment of the right of association. Act No. 1 of 1999 which regulates the activities of the NGOs (and which does not regard the protection and promotion of human rights as activities in which they may engage), continues in force without change, despite the recommendations made on the subject by the Special Representative in his previous report (paras. 29 and 139) and reaffirmed by the Commission in its resolution 2000/19 (paras. 2 (a) and 8). The authorities of Equatorial Guinea have not informed him of any measures taken to legalize these organizations, some of which submitted applications for authorization as long ago as 1994.

36. In his previous report, the Special Representative indicated that there were no trade unions in Equatorial Guinea, despite the fact that their activities were in theory regulated by Act No. 12 of 1992. According to the newspaper La Gaceta (No. 46; year IV, 2000) the Ministry of Labour and Social Security in 2000 granted authorization to the small livestock breeders' trade union (OSPA) which might possibly be the first trade union permitted in the country.

D. Freedom of the press and right to information

37. As the Special Representative indicated in his previous report, there is no daily, weekly or fortnightly press organ in Equatorial Guinea, and the normal information media are the radio or television, which are controlled by the Government (E/CN.4/2000/40, para. 32).

38. The first issues of two new newspapers, La Opinión and El Tiempo (which had applied for authorization to publish several years previously) appeared on 18 April and 3 May 2000 respectively. On 4 November 2000, the government delegate of Mongomo district ordered the confiscation of these newspapers. This measure was allegedly due to the fact that they had published one-sided information and photographs of former leaders of the country described as opponents of the regime. One of the newsagents was allegedly dismissed because he belonged to an opposition party. Not only were the newspapers confiscated but their readers were fined 20,000, 10,000 and 5,000 CFA francs (about US$ 28, 14 and 7 respectively).

39. The Special Representative was informed that newspapers that do not follow the Government's political line are also discriminated against in another manner: their reporters were not invited to attend activities or events organized by the authorities. In this connection, La Gaceta, in its issue No. 46, accused the Director-General for Information, Radio and Television of evicting Mr. Sopale, the editor-in-chief, from the TVGE radio building. A few days later, Mr. Antonio Ondó, the newspaper's photographer, was expelled from the ceremony inaugurating the new airport terminal and from the inauguration of a Mobil service station.

40. The Special Representative was informed that, in a decision dated 9 February 1999, the Ministry of the Interior ordered the suspension of Mr. Manuel Nse Nsogo as President of the Press Association of Equatorial Guinea (ASOPGE). This was allegedly done because Mr. Nsogo, who had been duly elected by members of the Association, was regarded as not possessing adequate professional qualifications for the job. The Special Representative would emphasize the need to elucidate this incident and to ensure that the recently appointed new president and management team are able to perform their functions in a completely independent manner without interference by the executive.

41. In 2000, Mr. Abid Hussain, Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, transmitted to the Government a communication concerning seven complaints of violations of the right to freedom of expression. The Special Rapporteur also expressed a desire to make an official visit to Equatorial Guinea, but received no reply. It may be recalled that, during the Special Representative's first visit to the country in 1999, the authorities had stated their willingness to receive thematic special rapporteurs and that, in its resolution 2000/19, the Commission welcomed the stated willingness of the Government of Equatorial Guinea to extend invitations to those rapporteurs (para. 5). The Special Representative wishes once more to urge the authorities of Equatorial Guinea to give

serious thought to the possibility of inviting Mr. Hussain so that his recommendations can be used as a guide in identifying more suitable measures to strengthen freedom of the press and freedom of opinion and expression.

42. As indicated in the previous report, the country has no official gazette that regularly publishes laws, draft laws or administrative acts. The Special Representative has received no information indicating that the Government of Equatorial Guinea has created an official publication for this purpose. Nor has he received any information on whether the Government has already cashed a cheque given to UNDP in 1999 by the United States of America to be forwarded to the Government as a donation for the purchase of a printing press; the cheque had not been cashed in 1999 because of internal difficulties within the Government of Equatorial Guinea.

43. During his stay in Madrid, the Special Representative was informed that the Spanish Agency for International Cooperation (AECI) had decided to end its financial support for the publication of texts of laws through La Gaceta because the arrangement was not being implemented regularly and systematically.

E. Freedom of movement

44. Freedom of movement is still subject to serious restrictions. Large numbers of military roadblocks, the requirement for visas to leave the country and internal exile are still current practices, despite the Special Representative's recommendations in his previous report (para. 134) and those of the Commission in its resolution 2000/19 (para. 2 (a)).

45. As indicated in the previous report, military roadblocks not only violate the right recognized in article 12 of the International Covenant on Civil and Political Rights but also constitute a source of abuse by the soldiers assigned to them. According to a report published in 2000 by a Sub-Commission of the National Human Rights Commission (CNDH) of the Parliament (House of Representatives of the People) of Equatorial Guinea, visits to the country's detention centres in October 1999 revealed that "the specific powers and functions of roadblock details, detachments, gendarmeriás and police stations are being abused and their authority is in most cases being used to victimize and pillage the people" (p. 54). The visiting mission recounts that, while it was inside the Beayob building, "for reasons unknown and without any explanation", "the Commander in Chief of the post ordered the destruction of the roadblock next to the detachment, which meant that it was illegal. It had been put up in order to plunder people" (p. 27).

46. Specifically, this report states that, in the opinion of the local authorities of the Island of Bioko, "people are ill-treated at roadblocks that are put up for the purpose of ensuring law and order" (p. 43) and that at the one situated at kilometre 5 on the Malabo-Baney road "policemen oblige drivers of public transport vehicles to hand over unjustified sums of money, which does not amuse the passengers" (p. 46).

47. Notwithstanding the recommendations made throughout the past 21 years, the authorities announced that military roadblocks would be reinforced on 12 October, the anniversary of the country's independence. This measure was criticized by certain members of Parliament.

48. The Special Representative's attention was drawn to the case of Mr. Santiago Eneme Ovono (also known as Alandi), former Minister for Foreign Affairs, former Diplomatic Adviser to the President, former Ambassador to Cameroon, and the President's first cousin, who is said to have been relieved of his post as Ambassador to Cameroon in August 1998 and confined to his native village for 18 months. Mr. Eneme personally told the Special Representative that he attributed this punishment to the fact that, in 1998, he had refused to carry out an order to abduct certain citizens of Equatorial Guinea who had sought refuge in Cameroon. At a family reunion on 13 December 1999, the President had accused him and members of the army of organizing a conspiracy against him. For this reason, and since he knew for certain that plans had been made to assassinate him, Mr. Eneme Ovono fled to Gabon on 17 January 2000 and from there proceeded to Spain.

49. The Special Representative was informed that Mr. Guillermo Nguema Ela (former Minister of Planning and Development), after being detained for over two years in Black Beach prison, was placed under house arrest in his Malabo home. He was also refused permission to leave the country to attend the funeral of his son, who had died in Spain in April 2000.

F. Right to physical freedom and integrity of the person

50. In his previous report, the Special Rapporteur had recommended, in particular and as a matter of urgency, that the Government should take the necessary steps to ensure the immediate and full realization of the rights to physical liberty, integrity of the person and the human dignity of detainees, including the prohibition of arrests without a warrant (except when someone is caught in the act of committing an offence) and the beating, ill-treatment or torture of persons deprived of their liberty, and that violations of such prohibitions should be suitably punished (para. 134). The Commission on Human Rights, in its resolution 2000/19, emphasized this recommendation (para. 2 (a)). There is no indication that anything has been done along these lines. On the contrary, the flagrant violations that occurred in 2000 reveal the pervasive legal insecurity experienced by the inhabitants of Equatorial Guinea in this respect.

51. One of the most revealing incidents in this connection was the detention of Mr. Augusto-Mba Sa Oyana for a period of 60 days between 17 June and 18 August 2000 by the the authorities. Mr. Sa Oyana is a Spanish citizen, 42 years of age, who was born in Equatorial Guinea but who has been living in Spain since 1977. On 17 June he went to Equatorial Guinea for family reasons and was obliged by the authorities to alight from his plane which was making a stopover in Malabo. He was then taken to Black Beach prison where he was locked up in one of the cells which are used to detain persons incommunicado and which were described in the Special Representative's previous report and in those of his predecessors. Two days later, at 4 p.m. on 19 June, he was visited by a senior official of the State Security Service who accused him of involvement in a plot to carry out a coup d'état against the Government, gave him paper and pencil and told him to write out his confession. Since he refused to do so and denied the accusation, he was removed from his cell at 10 p.m. and taken to an open area near the presidential mansion where government officials questioned him about the alleged coup d'état and tortured him. For this purpose they hung him from a pole that they threaded under the ropes around his ankles and under his handcuffs so that he was facing the ground while they beat the soles of his feet. At about 3 a.m., after having protested throughout that he was innocent, Mr. Sa Oyana fainted and was taken back to his cell where he was kept

incommunicado for three months in appalling sanitary conditions and not fed regularly by the prison authorities. On 18 August, having discovered a hole in the ceiling of his cell, he managed to escape and reached the Spanish diplomatic compound in Malabo where he was given protection and enabled to leave the country for Madrid following difficult negotiations between the two Governments. He weighed 40 kilograms having lost more than one third of his normal weight which had been 65 kilograms before his imprisonment.

52. The authorities of Equatorial Guinea concealed the whereabouts of Mr. Augusto-Mba Sa Oyana for several days and then for some time denied that he had been detained. Mr. Sa Oyana's wife learnt of his detention 10 days after 17 June through a message that her husband managed to smuggle out of the prison. From then on, Mr. Sa Oyana's family bruited the incident around as best it could through the international media and asked the Spanish authorities to request the Government of Equatorial Guinea to throw light on what had happened and to release him. The authorities of Equatorial Guinea initially denied the facts. Some time later they admitted that he had indeed been detained but pointed out that they considered him to be a national of Equatorial Guinea and not of Spain and for that reason rejected Spain's diplomatic requests and did not even allow its officials to visit him in prison. This sort of conduct, accompanied by arbitrary detention, torture and inhuman conditions of detention, clearly constitutes a case of enforced disappearance.

53. In mid-August 2000, the senior official of the State Security Service who had detained Mr. Sa Oyana once again went to see him and told him that he would be released if he signed a cheque for 15 million CFA francs in addition to the 5 million in cash that were in the brief case he had left on the plane at the time of his detention. This money was supposedly to be used to hire a special plane that would take him out of the country. Mr. Sa Oyana made out the cheque as requested but the promise to release him was never fulfilled.

54. At no time during the 60 days during which Mr. Sa Oyana was deprived of his freedom was he brought before a judicial authority nor were formal proceedings initiated in respect of the accusations made against him during his extrajudicial questioning. On 4 August 2000, the Special Representative wrote to the authorities of Equatorial Guinea requesting further information about the circumstances of and reasons for his detention, as well as his whereabouts and his health. No reply was received to this request.

55. On 22 August 2000, after Mr. Sa Oyana's escape from Black Beach prison Mr. Jesús Miguel Ondó Miyone, one of his cousins, also of Spanish nationality, was detained in Malabo. In messages which he managed to send from the hospital where he had been taken due to the serious health problems from which he suffers, Mr. Ondó Miyone stated that the authorities of Equatorial Guinea had told him he would remain in prison until Mr. Sa Oyono, his cousin, returned to the country and gave himself up. At the time this report was being drafted Mr. Ondó Miyone was still being detained, incommunicado in one of the cells of the Black Beach prison in Malabo. Like his cousin, he has not been brought before any judicial authority nor have formal proceedings been instituted against him.

56. Five other persons were being held incommunicado in the cells of Black Beach prison at the time of Mr. Sa Oyana's imprisonment and their situation has not changed at the time of writing. Four of them are militants of the FDR party and were detained just before the municipal

elections: Gabriel Nvé Mañana y Obá (38 years of age), arrested on 18 April 2000; Marcelo Seme Nzé (42 years of age), arrested on 24 May; Rubén Sima (38 years of age) and Romualdo Angüé Nbons (40 years of age), both of whom were arrested on 29 May. They are accused of involvement in an alleged plot to organize a coup d'état. They have not been brought before any judicial authority nor have formal proceedings been instituted on the basis of the charges against them. They say that they were tortured. Two of them, namely, Gabriel Nvé and Marcelo Seme, have or had legs broken as a result of their torture. Romualdo Angüé is not only being held incommunicado but is kept handcuffed in his cell. Presumably this is a form of additional punishment for having promised the authorities to testify against his companions and then breaking his word.

57. On 2 June 2000, Mr. Nigel Rodley, the Special Rapporteur on Torture, wrote to the Government requesting information about these four detainees, in particular about the allegation that they had been ill-treated and tortured in such a way that the femur of one of them had been fractured. He has not received a reply.

58. The fifth additional detainee held incommunicado in the cells of Black Beach prison at the time of Mr. Augusto-Mba Sa Oyana's imprisonment there is an ordinary prisoner who was tried and sentenced to 30 years' imprisonment in August 2000 for murdering a French voluntary service worker in 1993. His name is Enrique Angüé (29 years of age) and he is also being held handcuffed and incommunicado in his cell. He stated that, in December 1999, before he was arrested, the authorities proposed to pay him to assassinate former Minister Santiago Eneme Ovono. While the price to be paid for this hit job was being negotiated, the former Minister learnt of what was brewing and managed to flee the country, as indicated above.

59. The Special Representative was informed that Mr. Francisco Macías Nguema, the son of former President Macías, was arrested on 29 August 2000 "by order of higher authority" and accused of conspiracy. Franscisco Macías, who was Director-General of Housing in the Ministry of Public Works, Housing and Town Planning, is said to have been kept handcuffed in a cell at Black Beach prison for two weeks. Government sources stated that he had been arrested for "failing to respect State institutions".

60. According to newspaper accounts, a few days after Francisco Macías' detention, Mr. Rubén Maye Nsué Mangue, the Minister of Justice and Worship, was arrested at his home and accused of involvement in the alleged conspiracy attributed to his cousin Francisco Macías. He was allegedly arrested in August 2000 and then released on 12 October, on the occasion of National Independence Day, but subsequently placed under house arrest during that month. It is said he was initially held incommunicado, guarded by members of the security forces, in order to prevent contacts with the outside world. The Minister himself denied this information in a telephone interview with a radio correspondent, and stated that he had been travelling in the United States. Yet several persons assured the Special Representative in Madrid that, during the last quarter of 2000, they had received telephone calls from persons very close to the Minister informing them about his detention and asked them to do something to obtain his release.

61. From time to time the authorities detain various members of the opposition for relatively short periods. On 3 April 2000, Mr. Aquilino Owono Bibang and Mr. Gabriel Ndong Owono were detained in Akurenam on the orders of the government delegate for refusing to pay customs

duty on personal effects that the sister of one of them was bringing from Gabon. They were once again detained on 16 April by the same government delegate and for the same reason, although this time they had to pay a fine of 200,000 CFA francs (some US$ 280) before being released. At the end of April, Mr. Antonio-Eusebio Edú Nguema, the District Secretary of CPDS in Nosk-Nsomo, was detained for several days in the district capital and ill-treated because he was a member of the opposition. Mr. Jaime Ndong Edú, Secretary of the CPDS District Association, was detained from February to May in Nsork-Esebekang without charges being brought. He was allegedly forced to renounce being an opposition militant. Mr. Antonio Eusebio, CPDS representative in Nsomo, was also allegedly detained by the government delegate for about 24 hours. Mr. Francisco Mba Obiang, CPDS representative in Akurenam, was allegedly detained in Bata. Moreover, it was said that Mr. Amancio-Gabriel Nsé Angüé, Secretary for Organization and Civil Society of the CPDS, was detained for several hours in Akurenam for receiving visits from CPDS friends and militants at his home.

62. The Special Representative would reiterate the concern he expressed in his statement to the Commission at its fifty-sixth session concerning the conditions experienced by the 41 prisoners of the Bubi ethnic group who in March 2000 were transferred from Malabo prison (on the island of Bioko) to Ebinayong (on the continent). Their transfer took place without notice and without any official reason being given by the prison authorities. As indicated in his letter dated 14 March to the Minister of Justice, this transfer is worrying because it is prejudicial to the prisoners, who are thereby being deprived of the care and support of their families. It should be noted that prisons in Equatorial Guinea do not regularly provide adequate food and medical care to prisoners, who are therefore dependent on their families in this respect. The Special Representative has already had occasion to point out to the authorities of Equatorial Guinea that, according to the Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment, "A detained or imprisoned person shall have the right to be visited by ... members of his family" (Principle 19) and "If a detained or imprisoned person so requests, he shall if possible be kept in a place of detention or imprisonment reasonably near his usual place of residence" (Principle 20).

63. The Special Representative regrets that he has been unable to obtain any information from the Government of Equatorial Guinea in response to the many requests made throughout the past year. Specifically, he has received no information about improvements in detention centres. The general context described by CNDH in the report referred to above on the "Survey of the human rights situation in the pre-trial detention centres of the police and gendarmeria and in public prisons in Equatorial Guinea" is extremely serious and calls for immediate action on the part of the authorities responsible.

64. In its conclusions, CNDH emphasizes "the deplorable state of abandonment, wretchedness and dilapidation of all penitentiary establishments, detention centres and other police and gendarmaria premises" (p. 52); "the state of abandon in which penitentiary establishments and detention centres are left by their respective responsible ministries"; and "the lack of attention, except in occasional cases, paid to the basic needs of prisoners, such as food, medical care and medicaments, working toilet facilities, drinking water, hygiene and the cleanliness of the premises, including toilets, cells and basic facilities" (p. 53). The report adds that "some female prisoners are sexually harassed and abused" (p. 55).

65. The wording used in this report to describe conditions in these detention centres is eloquent; it refers to the Mbini public prison as having cells of "miniscule" dimensions that "stink to high heaven" and adds that "there is a real risk of their collapsing", that "they are not fit for human occupation and there is no ventilation" and that the prison is "unfit for human beings". The same comments are applicable to most of the centres visited.

66. CNDH condemns the widespread practice of using prisoners for the personal benefit of judges or other authorities as well as holding men and women together in the same premises. Certain authorities make the astonishing statement that "in order to avoid holding men and women in the same premises" "these [women] spend the night in their own houses as a preventive measure" (p. 26) or that "as a precautionary measure, they spend the night with police officers until such time as they have completed their spell of duty" (p. 14).

67. In many other respects, the CNDH report coincides with the conclusions reached by the Special Representative and his predecessors concerning the shortcomings of the prison system. Specifically, the fact that "the persons actually responsible for the prisons are not members of the special prison service" (p. 54), but soldiers, highlights the need to draw up regulations for detention centres that are in conformity with the principles laid down by United Nations bodies. According to these principles, detention centres should be supervised by a professional civilian body.

68. The Special Representative was informed that members of the International Committee of the Red Cross visited Equatorial Guinea in the second quarter of 2000 in the context of a new form of cooperation established with the Government. Although no agreement has yet been signed between the two parties, the authorities authorized visits to all detention centres. The Special Representative hopes that the cooperation that has thus been initiated will be developed and strengthened by the conclusion of an official agreement that will include a more binding commitment on the part of country's prison authorities.

G. Right to due process (and independence of the judiciary)

69. In his first report (E/CN.4/2000/40) the Special Representative drew attention to the need to adopt legislative and administrative measures to ensure that the required separation between the executive branch and the judicial branch is achieved, to train judicial officers, to promote the prosecution of human rights violations and to restrict the jurisdiction of military courts, which should not have competence in respect of civilians (para. 137). These recommendations were explicitly welcomed by the Commission in its resolution 2000/19 (para. 2 (a) and (e)). These recommendations were, moreover, based on similar observations made on a number of occasions by previous Special Rapporteurs and the Independent Expert, as well as on a special study carried out by the United Nations in 1998 of the administration of justice in Equatorial Guinea (see E/CN.4/2000/40, para. 61).

70. No official information was received during 2000 indicating that any steps had been taken to improve the system of justice in Equatorial Guinea by strengthening the right to due process and ensuring the independence of the judiciary.

71. On the contrary, Mr. Augusto-Mba Sa Oyana's detention without a warrant for 60 days, described above, is an eloquent illustration of the difficulties encountered under Equatorial Guinea's judicial system. No judicial authority intervened in his case despite the fact that the maximum detention period of 72 hours laid down by law had been well exceeded. Nor did any judicial authority take action in respect of the other four prisoners, militants of the FDR party, who were imprisoned together with Mr. Sa Oyana and who have been detained without a warrant in the cells of Black Beach prison since the end of the first quarter of 2000. Judicial intervention was also lacking in the subsequent detention without a warrant, since August 2000, of Mr. Jesús Miguel Ondó Miyone, who is being kept incommunicado in similar conditions in Black Beach prison in retaliation for the flight of his cousin, Mr. Augusto-Mba Sa Oyana.

72. In such cases of political persecution, the administration of justice is not so much hampered as blatantly disregarded by the executive authorities, who feel that they are completely free to act without having to worry about any reaction or intervention on the part of the judiciary. There is no reaction or intervention either at the time the violation occurs or after it has ceased. Mr. Augusto-Mba Sa Oyana does not believe that there is even a remote possibility of applying to the courts of Equatorial Guinea for due compensation for the outrage he suffered. Even if national legislation provided for a procedure of this kind, which is doubtful, he would be unable to apply to the courts personally since he would obviously be deprived of his freedom once again, and he has good reason to fear that if he were to authorize a third party to represent him before the court the result would be persecution of his proxy by the Government. Yet these suppositions aside, Mr. Sa Oyana is convinced (and justifiably so) that no judge or magistrate in Equatorial Guinea would dare to institute proceedings or hand down a decision against the Government or against officials acting on its behalf for depriving him of his liberty without a warrant, keeping him incommunicado, torturing him, making him disappear temporarily, stripping him of his belongings and depriving him of the right to justice. This absence of protection and this defencelessness are concrete examples of the lack of independence of the judiciary in Equatorial Guinea.

73. The judiciary's lack of independence has also been recognized by CNDH. In its report on detention centres and military blockades, mentioned above, CNDH states that "judges and military commanders are at loggerheads. There is a great deal of political interference with the law" (p. 43), and "intimidation of the judiciary by the army is continuing" (p. 55). It adds that certain local authorities complain that they are "unfamiliar with the work of the judges in their area who are often absent from the town" (p. 38) and that "the constant and persistent absence of judges in the city makes it necessary to detain offenders for more than 72 hours on police premises" (p. 40). Perhaps this offers another explanation of the shortcomings of the administration of justice in the case of ordinary detentions as distinct from detentions "by order of higher authority".

74. The problem of impunity is also aggravated by the fact that sentences imposed by the courts on persons enjoying the protection of the authorities are not executed. On 2 November 2000, the Court of Appeal ordered the imprisonment of Mr. Francisco Mba Mendam, an army officer and former government delegate of Micomeseng district, who was sentenced in October 1999 to 30 years' imprisonment for having killed Mr. Julián Esono Abaga, the former Ambassador in Paris, in January 1999. The Special Representative informed the

United Nations Commission on Human Rights last year that, despite being sentenced and instead of being sent to Bata prison, Mr. Mba Mendam was living as a guest in the home of the Deputy Inspector-General (E/CN.4/2000/40, para. 65). CNDH, in its report already referred to and drawn up in October 1999, following its visits to detention centres, indicated that it had not met Mr. Mba Mendam in Bata prison and had been unable to obtain detailed information concerning his whereabouts.

75. The shortcomings of the judicial system could be exacerbated by the personal violence being encouraged by the State leadership. In his speech of August 2000, the President of the Republic reportedly urged the population of Bata to arm themselves with machetes against an alleged danger from outside on the part of certain countries who had an interest in destabilizing Equatorial Guinea. The creation of independent vigilante groups is a source of considerable concern since they might engage in forms of personal violence that would be regarded by the people as authorized or tolerated and would constitute a serious threat to the rule of law.

II. SITUATION OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS

A. General economic situation

76. For half a decade the country has been undergoing a phase of high economic growth, thanks to the discovery and exploitation of large oilfields. The current crude oil production is not known exactly, as no official information is available in that respect, and oil revenues are not shown in the State budget. However, according to the daily La Gaceta, the Minister who is Government spokesman recognized that production has already reached the figure of 200,000 barrels a day. At the beginning of the year 2000, it was estimated at slightly more than 100,000 barrels a day. When the oil boom began in the country, around 1995, the figure mentioned was 7,000 barrels a day. Experts in this field forecast that by the year 2001 production may rise to as much as 300,000 barrels a day. This rising trend, which had developed in such a short period, is indicative of the size of the resources discovered, which in addition are considered to be of very high quality. Exploration work has been divided between companies from Australia, Brazil, France, the Republic of Korea, Nigeria, South Africa and the United States.

77. Unfortunately, all this wealth does not help the living standards of the majority of the population. According to the UNDP's Human Development Report 2000, per capita gross domestic product (GDP) rose from US$ 944 in 1997 to US$ 1,049 in 1998, which still does not reflect the increase in oil production in the last two years. Despite the steady rise in GDP, and as pointed out in the previous report, Equatorial Guinea continues to be ranked 131st in the world's Human Development Index. According to the data, the gap between GDP and the Human Development Index has widened rising from 3 to 4 points, which indicates that the greater wealth has not been converted into effective human development.

78. Economic growth is not synonymous with human development, according to the opinion of the United Nations General Assembly, which, in its Declaration on the Right to Development, defines development as "a comprehensive economic, social, cultural and political process, which aims at the constant improvement of the well-being of the entire population and of all individuals

on the basis of their active, free and meaningful participation in development and in the fair distribution of benefits resulting therefrom". What this means is that the mere improvement of economic indices is not enough to determine enhanced enjoyment of the right to development and of economic and social rights. Fundamental principles, such as non-discrimination, equality and social justice, must underlie any country's development. There is an urgent need for these principles to be applied in Equatorial Guinea to the oil boom currently occurring in the country.

B. Right to health

79. In his previous report, the Special Representative had warned about the high infant mortality rate (109 per 1,000 live births), the high mortality rate among children under 5 (172 per 1.000), inadequate budget allocations for the health sector, and widespread conditions of poor hygiene, which encourage diseases such as malaria and typhoid fever to flourish.

80. It was also indicated in the previous report that the authorities of Equatorial Guinea regarded the incidence of AIDS as still limited in the country, with only 3,000 persons seropositive and 40 suffering from the disease, of whom 7 were reported to have died. However, according to information published in the press, a recent report by the Joint United Nations Programme on HIV/AIDS (UNAIDS) states that 9.98 per cent of rapid tests carried out in 1999 yielded positive results, among 64 per cent of which more thorough analyses revealed the presence of HIV. According to a 1997 study, 3.48 per cent of the sexually active population was seropositive. This meant that in 1999 there were at least 10,000 seropositive persons in Equatorial Guinea. If these data are projected in the future, at the current rate of growth there will be more than 23,398 seropositive cases by 2005.

81. The Special Representative did not receive any information from the Government about improvements or developments in the country's health system, as the Equatorial Guinea authorities did not respond to his request for information.

C. Right to work

82. In his previous report, as his distinguished predecessor had done on a prior occasion, the Special Representative had drawn attention to the high rates of unemployment and underemployment in the country. He had also warned about existing restrictions affecting the right to work, which take the form of various means of preventing persons who are not faithful supporters of the government party from obtaining jobs. According to the report on human rights published in 2000 by the United States Department of State (sect. 6 (a)), the Agency for the Promotion of Employment in Equatorial Guinea (APEGESA) is in charge of screening the staff of oil companies for membership of the government party, and retains up to 60 per cent of employees' wages. The Special Representative did not receive any assurance from the Government regarding the elimination of such practices, as recommended by the Commission in resolution 2000/19 (para. 2 (h)), or regarding improvements or developments in the right to work, as the Equatorial Guinea authorities did not respond to his request for information on this matter.

83. In 2000, the Government of Equatorial Guinea did not ratify any of the labour conventions adopted by the International Labour Organization. In the past, Equatorial Guinea had the Food and Catering (Ships' Crews) Convention, 1946 (No. 68), Accommodation of Crews Convention (Revised), 1949 (No. 92), Maternity Protection Convention (Revised), 1952 (No. 103), Minimum Age Convention, 1973 (No. 138), the Equal Remuneration Convention, 1951 (No. 100), Hours of Work (Commerces and Offices) Convention, 1930 (No. 30), Weekly Rest (Industry) Convention, 1921 (No. 14) and Hours of Work (Industry) Convention, 1919 (No. 1). It has still not submitted any report on the status of their implementation.

D. Right to education

84. In his previous report, the Special Representative had expressed concern that only a small percentage of Equatorial Guinea's income was earmarked for education (1.8 per cent), which was reflected in an equally low proportion of State expenditure (5.6 per cent), late entry into the school system and high drop-out rates, more so among girls than among boys.

85. The Special Representative did not receive any information from the Government concerning improvements or developments in the country's educational system.

E. Status of women

86. According to the report published by the National Programme of Action to Combat AIDS, there are twice as many women infected by HIV as men.

87. In his previous report, the Special Representative had drawn attention to the considerable discrimination faced by women in Equatorial Guinea, as reflected in the fact that the gross national product produced by women is less than half that produced by men; the illiteracy rate among women is three times greater than among men; and the number of women reaching secondary school level is half that of men, among other factors.

88. Like his distinguished predecessors, the Special Representative had expressed particular concern for the country's practice of imprisoning women who are separated or divorced for not returning to their spouses the sum paid for them when they married, known as their dowry. This practice is blatantly contrary to article 11 of the International Covenant on Civil and Political Rights (to which Equatorial Guinea is a party), which prohibits imprisonment for debt. According to the aforementioned report prepared by the Subcommission of the National Human Rights Commission (CNDH), the district judge in Bidzabidzan had reported that the most frequent court cases he dealt with were those related to marriages and dowries (p. 27). The same report says that in Nkue prison, the only three prisoners were women sentenced for non-payment of dowry; in the Ebibeying public prison, out of a total of 12 prisoners, 5 had been incarcerated for non-payment of dowry; another woman in Evinayong had also been detained for the same reason. According to the CNDH report, the dowry issue is a source of concern even to the local authorities themselves. In Ebibeyin, Añisok, the authorities referred to the dowry as "a disturbing and serious problem which destroys family unity. This mechanism should be codified, defined and quantified, and in any case abolished" (pp. 31 and 36).

89. The Special Representative received no information from the Government of Equatorial Guinea about fulfilment of the express recommendation "to eliminate all forms of discrimination against women and to continue to promote their full enjoyment of human rights by taking measures such as the ending of the practice of imprisoning women for not returning their marriage dowry when they separate from their husbands, and by promoting women's right to education", as agreed by the Commission in resolution 2000/19 (para. 2 (f)).

III. MONITORING OF TECHNICAL ASSISTANCE TO EQUATORIAL GUINEA IN THE FIELD OF HUMAN RIGHTS

A. General situation

90. In resolution 2000/19, the Commission on Human Rights requested the Special Representative to verify, on behalf of the Commission, the technical assistance provided to Equatorial Guinea to support its national plan of action on human rights, based on the recommendations made since 1979 and reiterated in his report.

91. In this connection, the Special Representative sent a letter to international governmental and non-governmental organizations maintaining relations with the Government of Equatorial Guinea, requesting information about any measures taken to establish technical cooperation activities in the field of human rights. Replies were received from the UNDP office, the European Commission and the Fondation Internationale des Droits de l'Homme.

B. Technical assistance by the European Commission

92. According to information received, the European Commission signed a cooperation agreement with the Government of Equatorial Guinea, known as the National Indicative Programme (NIP), in the framework of the implementation of the fourth Lomé Convention. The Programme is funded to the extent of 12 million Euros (roughly US$ 11.3 million), of which 2.5 million (roughly US$ 2.3 million) will be earmarked for the promotion of human rights, the development of the rule of law and the promotion of civil society.

93. In the agreement, the European Commission set out a series of principles underlying its implementation. In particular, it mentions the need for the planned activities to be undertaken in line with efforts to develop democracy and respect for human rights. It also requests the authorities to demonstrate their willingness to undertake to establish the rule of law, in which the rights of citizens will be respected.

94. An identification mission was carried out in cooperation with the Inter-Parliamentary Union in September and October 2000, for the purpose of identifying priority actions. At the time this report was drafted, the results of the mission were still not available. According to the evaluation made during the identification mission, a financing proposal will be prepared including details concerning objectives, activities, means and a work plan. The programme, which could start in the second quarter of 2001, will focus its activities on the following aspects: (1) right to legality and reinforcement of representative democracy; (2) reform and improvement of the judicial sector; and (3) strengthening of civil society.

C. Technical assistance by the United Nations Development Programme

95. In August 2000, under an agreement with UNDP, the Government of Equatorial Guinea adopted a National Governability Programme, which had been under discussion for two years. As this report was being completed, its approval by Parliament was still awaited.

96. If the programme is adopted, that will represent a significant step, provided that it is followed by genuine implementation of the measures concerned. The Special Representative would hope that many of the recommendations made by the United Nations Commission on Human Rights over the past 21 years are reflected in the document. Nevertheless, the Special Representative regrets that the Plan's wording is at times too vague and does not specify commitments in such a way that their effective implementation, or the genuineness of the Government's commitment, can be verified.

97. A particular concern is that, with regard to oil revenues, the State's commitment goes no further than applying "greater transparency" in the management of resources, as opposed to complete transparency. Similarly, it is of concern that there is no intention to limit the use of decree laws, which should be considered an exception in the output of legislation and not regular practice.

98. Where freedom of movement is concerned, the Programme does not mention the need to remove existing military roadblocks. The paragraph relating to freedom of association, which does not recognize the need to eliminate existing restrictions, is not clearly worded.

D. Technical assistance by the Government of Spain

99. In October 1999, at the ninth meeting of the Spain-Equatorial Guinea Joint Commission, the Government of Spain signed an agreement for a cooperation programme with Equatorial Guinea for the 2000-2002 triennium.

100. The bilateral cooperation programme covers many sectors, including activities in the area of human rights. Under section A.3 on "Institutional strengthening", the Spanish agency cooperation "will provide technical assistance and training through specialized bodies and NGOs, in order to make the Centre for the Promotion of Human Rights fully operational", with support in the areas of dissemination and awareness-creation. In this line of cooperation, Spain intends to coordinate action with initiatives planned under European Union cooperation.

101. The agreement also includes specific support for the Codification Commission, which will be dealing with the codification and reform of legislation, and the reform of the prison system.

E. Technical assistance by the Fondation Internationale des Droits de l'Homme

102. In July 1999, the Fondation Internationale des Droits de l'Homme signed a protocol of cooperation on human rights with the Government of Equatorial Guinea for the general coordination of the programme of the Centre for the Promotion of Human Rights and

Democracy, authorized by presidential decree in March 1998. According to the terms agreed, the programme was to have been implemented within 18 months of signing the protocol. To date there is no indication that any of the planned activities have been carried out.

F. Technical assistance by the Office of the United Nations High Commissioner for Human Rights

103. The Office of the United Nations High Commissioner for Human Rights wrote to the Minister of Justice in 1999, informing him that it was prepared to draw up a programme of technical assistance. According to the Special Representative's first report, the Government was asked to ensure immediate implementation of recommendations that did not require technical assistance. The Special Representative has received no information indicating that any of the recommendations contained in resolution 2000/19 have been implemented.

104. When he addressed the fifty-sixth session of the Commission, the Minister of Justice stated that the President of Equatorial Guinea was prepared to take the initiative to appoint a high-level team from his Government to meet with the Office of the High Commissioner in order to negotiate point by point a comprehensive programme of technical assistance, pursuant to Commission resolution 1999/19 of the year before. However, the Special Representative has no knowledge of any attempt to arrange a meeting of that kind. After receiving a communication from the Minister of Justice, saying that the Government did not consider a visit by the Special Representative to be appropriate before the Government of Equatorial Guinea and the Office of the High Commissioner had drawn up the new programme of cooperation, the Office reiterated its willingness to arrange a programme of technical assistance in human rights and reminded the authorities of Equatorial Guinea that, according to the terms of the 1993 Vienna Declaration and Programme of Action, all technical assistance activity should abide by the principles of transparency and complementarity with monitoring services.

IV. CONCLUSIONS

105. The human rights situation in Equatorial Guinea continues to be grave, but could be improved if resolute action is taken by the international community in general and the United Nations Commission on Human Rights in particular.

106. The recommendations made by the Commission to the Government of Equatorial Guinea in resolution 2000/19 have not been implemented, nor has the Government cooperated in any way with the Commission's Special Representative to implement them, even going so far as to refuse him permission to visit the country in 2000, nor has the Special Representative received any replies to the various enquiries he sent the Government throughout the year. The Government has not replied either to the requests of the Commission's other rapporteurs, such as the Special Rapporteur on the right to freedom of opinion and expression and the Special Rapporteur on torture, or to the requests of the Office of the United Nations High Commissioner for Human Rights.

107. The conclusions which the Special Representative had set out in his report to the Commission at the previous session remain entirely valid. For reasons of space they are not

reproduced in this document, but they should be understood as literally incorporated within it (E/CN.4/2000/40, paras. 113 to 132). The Special Representative invites the Commission to take this into account.

108. In brief, those conclusions found that in Equatorial Guinea any person can be deprived of liberty with no effective judicial remedy, and even subjected to torture, as a result of the profound distrust entertained by the Government towards any form of dissidence, which has prevented the political agreements concluded since 1993 between the governing party and opposition parties from ever being given effect. The exceptional economic boom which followed the discovery of major oilfields in the mid-1990s has not led to any improvement in the economic, social and cultural rights of the population, more than 65 per cent of which lives in conditions of extreme poverty, being denied the most elementary rights to education and health, which especially affect children. Legislation is not published regularly. Human rights organizations and trade unions are not authorized to function, nor is any independent, regular daily press allowed, apart from a few occasional publications which try to appear on a monthly basis. Society as a whole, which experiences problems of discrimination between the different ethnic groups that populate a territory spread over 28,000 square kilometres, is subjected to the constant presence of the armed forces, which restrict the right to freedom of movement by setting up roadblocks across the country and by exercising criminal jurisdiction over civilians. Women are subjected to discriminatory practices, which go to the extreme of imprisoning them for not returning their marriage dowry in the event of divorce or separation. All the above occurs in the midst of general impunity for human rights violations, based on the lack of independence of the judiciary vis-à-vis the executive power.

109. The situation experienced by Equatorial Guinea is not new. It has been reported to the Commission for the past 21 years, ever since the decision was taken to appoint a Special Rapporteur for the country in 1979. Basically speaking, the situation has not changed since then, despite the recommendations which the Commission has made year after year to the Government of Equatorial Guinea.

110. Although the Government of Equatorial Guinea did not allow the Special Representative to observe on the spot how the human rights situation had developed by visiting the country in the year 2000, he was able to ascertain that there had not been any signs of improvement in that respect. On the contrary, arbitrary detentions continued to occur throughout the year, "by order of higher authority", which means that imprisonment is decided by the executive power, subject to no control whatsoever by the judicial authorities. This is reliably illustrated in the case of the Spanish citizen of Equatorial Guinean origin, Augusto-Mba Sa Oyana, who was imprisoned for 60 days in the country's capital, Malabo, in Black Beach prison, situated within the presidential compound, where he was tortured, temporarily "disappeared" and stripped of his belongings, until he was able to escape and to find shelter with the Spanish diplomatic mission. During his imprisonment (similar to that experienced by other persons mentioned in the reports which the Special Rapporteurs and Independent Expert have submitted to the Commission over the past 21 years), Mr. Sa Oyana remained in solitary confinement inside a prison cell, like five other persons who had been previously detained and also subjected to torture and held incommunicado, which confirms that such practices are grave, systematic and persistent.

111. Concern is expressed that the victims of complaints for human rights violations increasingly include senior members of the governing group. The confinement to which a first cousin of the President of the Republic and former Minister for Foreign Affairs was subjected for 18 months and his subsequent escape from Equatorial Guinea on account of alleged plans for his assassination at the beginning of the year 2000; the detention without a court order of the Director-General of Housing of the Ministry of Public Works (the son of former President Macías) in August; and the alleged detention without a court order of the Minister of Justice (a cousin of the above) in August and October are events that cannot pass unnoticed. The difficulty of confirming each of these cases separately should not prevent one from appreciating that taken together (alongside other power struggles which have occurred between highly placed political figures in the past year, which have not been recounted in this report) they reveal the presence of serious splits in the party leadership, which could give rise to even greater human rights violations for the rest of the population. Already in his report a year earlier, the Special Representative had warned that "senior State officials, as well as United Nations officials, are not free of the risk of falling victim to these (human rights) violations" (E/CN.4/2000/40, para. 114). What has happened in the year 2000 has exceeded any forecast made to date.

112. In November 2000, the political opposition, gathered in Spain, handed the Special Representative a proposal inviting the Government to agree to arrangements which, with support by the international community, could ensure a transition to democracy, based on respect for human rights. This proposal deserves consideration, given that Equatorial Guinea, more than many other countries experiencing difficulties in the field of human rights, is in a better position to improve its situation in this respect, thanks to its small population (roughly 450,000 inhabitants), the extraordinary economic resources it has been receiving for the last five years as a result of the discovery of new oilfields, and the support that it can expect from the international community, which has been following developments in the country closely in the last two decades, and which would therefore be able to make a positive, qualified contribution to a real solution to existing problems.

113. It is important, therefore, to reiterate the conclusion (already expressed in the Special Representative's previous report) that the technical assistance which the international community may provide to Equatorial Guinea can be productive provided that it starts from the implementation, within a reasonable period, of the recommendations made repeatedly by the Commission which do not require technical assistance (such as the cessation of arbitrary arrests and torture, guaranteed freedom of opinion, the publication of legal texts, and the improvement of sanitary conditions in detention centres), which could be accomplished by a simple government order to that effect, and the adoption of control mechanisms to ensure that the order is fulfilled.

V. RECOMMENDATIONS

114. The Special Representative reiterates all the recommendations given in the relevant section of his previous report (paras. 133 to 146), which should be considered to be literally incorporated in this new report, and which have not been physically included only to save resources. None of these recommendations has been overtaken, since none has been applied by the Government of Equatorial Guinea, so that the members of the Commission are urged to consider them again in their full version or as summarized in its resolution 2000/19.

115. These recommendations are sufficiently well known, since they are the same as those the Commission has repeatedly made to the Government of Equatorial Guinea over the past 21 years, including some which can and should be immediately implemented, without the need for additional technical assistance, by measures such as an order putting an end to arbitrary arrest and torture, the authorization of freedom of expression and freedom of the press, the elimination of permits to leave the country and the removal of military roadblocks inside the country, the periodic publication of legislation, the ratification of the international instruments which Equatorial Guinea has not yet accepted (such as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the International Convention on the Elimination of all Forms of Racial Discrimination), and a decision to deal with impunity for human rights violations. The Special Representative recommends that the Commission urge the Government of Equatorial Guinea to implement these basic recommendations without further delay.

116. Other recommendations, which have also been made repeatedly and which are described in detail in the previous report, could be better implemented with suitable technical assistance, provided that the political will exists to put them effectively into practice. The Special Representative recommends that the Commission invite the Government to express this political will through the direct and early application of the recommendations that do not require technical assistance and the adoption of a timetable agreed with the international community, indicating the cooperation activities it needs in order to give effect to the remaining recommendations (through technical assistance). These remaining recommendations relate, inter alia, to the independence of the judiciary, the codification of laws, the elimination of discrimination against women, political pluralism and the satisfaction of basic food, adequate housing, health, education and employment needs, with special consideration for the rights of children.

117. The Special Representative recommends that all cooperation organizations which are either developing or considering developing agreements with Equatorial Guinea should be called upon to bring those agreements into line with the guidelines set out herein, and should coordinate their implementation with the Commission on Human Rights, through its Special Representative, and with the Office of the United Nations High Commissioner for Human Rights.

118. The Special Representative reiterates the recommendation that a special appeal should be made to multinational corporations working in Equatorial Guinea to combine their efforts with those of the Commission to give effect to the recommendations repeatedly made to the Government of Equatorial Guinea with respect to human rights, and to cooperate to that end with the Special Representative of the Commission and the Office of the United Nations High Commissioner for Human Rights.

119. In addition to the recommendations made in the past, the Special Representative recommends that the Government of Equatorial Guinea be particularly called upon to end the practice of enforced disappearance and, to that effect, to agree to organize a national register of detainees, strictly and accurately kept and open for easy consultation by anyone. It is also recommended that a real remedy of habeas corpus should be instituted, effectively and without delay, in order to enable individuals to protect themselves against arbitrary detention and acts of enforced disappearance.

120. The Special Representative further recommends that consideration be given to the invitation which the opposition of Equatorial Guinea in exile extended to the international community and to the Government of Equatorial Guinea to engage in a political dialogue outside the country, aimed at finding ways and means of establishing democracy and human rights, and also recommends that the Commission declare its willingness to assist with this process, within its mandate, if that is deemed useful by the parties.

121. In view of the fact that the Government of Equatorial Guinea did not cooperate with the mandate assigned to the Special Representative in the year 2000, it must be recommended that, in addition to duly expressing its concern in that regard, the Commission make a special appeal to the authorities of Equatorial Guinea to take a position in conformity with their international obligations, and that the Commission arrange for the necessary mechanisms to ensure that this is done.

122. To sum up, the Special Representative recommends that the Commission maintain and strengthen its decision to follow closely the human rights situation in Equatorial Guinea and that it should concentrate on the early implementation of the recommendations repeatedly made to the country. To this end, in addition to renewing the mandate of a Special Representative to monitor the human rights situation by preparing a report and to monitor any technical assistance which may be provided to the country, the Commission should adopt further measures such as to ensure the implementation of its Special Representative's mandate and the fulfilment by the Government of Equatorial Guinea of its international obligations and the commitments specifically undertaken by it before the Commission.

Annex I

LETTER DATED 3 JULY 2000 FROM THE SPECIAL REPRESENTATIVE TO THE MINISTER FOR FOREIGN AFFAIRS AND THE MINISTER OF JUSTICE AND WORSHIP

Sirs,

The Minister of Justice and Worship sent the Minister for Foreign Affairs an "information note" (ref.: 2000-780-090) on 9 June 2000 stating that he found it "inappropriate that a visit should take place before the Government of Equatorial Guinea and the Office of the United Nations High Commissioner for Human Rights [had] drawn up the new programme of cooperation and technical assistance for the national human rights plan referred to in the resolution of the Commission on Human Rights (...)". A copy of the information note was sent by the Minister of Justice to the Resident Representative of the United Nations Development Programme (UNDP) in Equatorial Guinea, who was kind enough to inform me of the situation. I should like to make the following observations in this regard:

1. On two occasions this year, I have sought your Government's leave to visit Equatorial Guinea and carry out the assignment entrusted to me, with your Government's consent, by the Commission of Human Rights in resolution 2000/19. On the first occasion, I proposed, in a letter dated 15 May 2000, a visit from 11 to 25 June. On the second occasion, as I had received no word from your Government, I proposed, in a letter dated 7 June 2000, the period from 6 to 20 August for the visit. This Special Representative has had no official reply from the Government of Equatorial Guinea to two proposals for a visit to the country in pursuance of his mandate.

2. The visit to Equatorial Guinea which Commission on Human Rights resolution 2000/19 requires the Special Representative to make is in no way contingent on the prior existence of a technical assistance agreement between the Government of Equatorial Guinea and any United Nations body such as the Office of the High Commissioner for Human Rights. The Commission decided, in paragraph 11 of the resolution, "to renew the mandate of the Special Representative for one year and [requested] him to monitor the situation of human rights in Equatorial Guinea and to report to the Commission at its fifty-seventh session (...)". I therefore submit, with due respect, that there is no reference in resolution 2000/19 to the condition mentioned by the Minister of Justice in the note referred to above.

3. As you know, the Commission on Human Rights entrusted its Special Representative for Equatorial Guinea with a dual mandate. In addition to requesting him, in paragraph 11 as quoted above, to monitor the human rights situation in the country, in paragraph 12 of the resolution, it requested him "to verify, on behalf of the Commission, that the technical assistance provided to Equatorial Guinea supports its national plan of action on human rights, based on the recommendations made since 1979 and reiterated in his report". Clearly, the Special Representative's visit to the country is not viewed as a prerequisite for the approval and

provision of technical assistance to Equatorial Guinea. But it is also clear that, the sooner the Special Representative's visit to Equatorial Guinea takes place, the more facts he will be able to gather in support of his mandate of supervising the technical assistance provided to the country. Moreover, smooth communications between the authorities of Equatorial Guinea and the Special Representative during his visit to the country could save time in drawing up a technical assistance programme based on the recommendations of the Commission on Human Rights. An arrangement whereby the Special Representative performed the tasks assigned to him and the Government simultaneously negotiated with the Office of the High Commissioner on technical assistance services would be the most appropriate way of ensuring the proper and prompt provision of those services. This is precisely what is meant by the seventh preambular paragraph of resolution 2000/19, which refers to the principle of "complementarity of technical assistance services with human rights monitoring services". Here again, we find nothing in resolution 2000/19 that corresponds to the idea of making the Special Representative's visit subject to prior agreement between the Government of Equatorial Guinea and the Office of the High Commissioner on a technical cooperation programme.

4. Resolution 2000/19 encourages "the Government to discuss and to agree on means for [the] early implementation [of a national human rights action plan], together with a comprehensive programme of technical assistance, with the Office of the High Commissioner for Human Rights" (para. 3). A national human rights action plan is a necessary but also an ambitious undertaking that needs time and very demanding conditions for its implementation. The national plan of action in the form in which it was contemplated at the Vienna World Conference on Human Rights in 1993 is an instrument of good governance: it is the product of a dialogue between the Government and civil society on the development and adoption of a national human rights policy. Certain minimum conditions must be met to facilitate this dialogue; hence the importance of having a general technical assistance plan that helps to bring about such conditions and pave the way for the national plan of action. If the aim is, in the words of the resolution, to ensure the early implementation of the national plan, the Government must also promptly consider and communicate to the Office of the High Commissioner the means that it is prepared to make available and those that it requires for the purpose. The Special Representative is not aware that any proposal for technical cooperation based on resolution 2000/19 has been submitted by the Government of Equatorial Guinea to the Office of the High Commissioner. Until such time as such a proposal is made, indicating the recommendations that the Government intends to implement without the need for technical assistance (eighth preambular paragraph) and those for which it requires technical assistance, it will be difficult to conclude a cooperation agreement between the Government of Equatorial Guinea and the Office of the High Commissioner. That being the case, the statement that the Government is unable to receive a visit from the Special Representative because a programme of technical assistance has not been drawn up is even more difficult to understand.

In the light of the foregoing, I respectfully request the Government of Equatorial Guinea, through your good offices, to reconsider the statement made in the note to which this letter refers, and give the Special Representative leave to visit the country so that he can fulfil his

mandate, in the belief that this will also lead to progress on the matter of technical assistance and the identification of activities and decisions conducive to the preparation of a human rights action plan. To that end, I reiterate my offer of a two-week visit, from 5 to 20 August 2000. May I kindly request the Government to reply to this third application for authorization for the visit, and to do so promptly so that the Special Representative can make arrangements for those mandate-related activities that depend on the Government's reply in good time for 5 August.

Accept, Sirs, the assurances of my highest consideration.

(Signed) Gustavo GALLÓN
Special Representative